

RESOLUTION NO. 2019-37

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF LADUE, MISSOURI A PROFESSIONAL SERVICES AGREEMENT WITH O.R. COLAN ASSOCIATES, LLC. FOR THE WILLOW HILL STORMWATER INFRASTRUCTURE IMPROVEMENTS PROJECT

WHEREAS, the City of Ladue adopted a Storm Water Master Plan in 2016 which was updated and approved along with the associated Five-Year Storm Water Implementation Plan on July 15, 2019; and

WHEREAS, the design phase for the Willow Hill project began on July 2, 2018 and has been proceeding with both preliminary plans and right-of-way plans having been approved by MSD and Department of Public Works; and

WHEREAS, the Public Works Department has two Stormwater engineers, both of whom work 20 hours per week, and the workload of same does not allow for adequate time to obtain the 31 easements that are required for the Willow Hill Stormwater project; and

WHEREAS, the City of Ladue has worked with O.R. Colan, and specifically Agent Leslie Metts, on numerous past projects including Lay Road Sidewalk Improvements, McKnight Road Sidewalk Improvements, Price Road Sidewalk Improvements, and Litzsinger Road Sidewalk Improvements and have consistently found them to be highly competent in working with the property owners of this community to acquire easements; and

WHEREAS, the proposal received by O.R. Colan Associates, LLC is for a total fee not to exceed \$19,300.00, excluding recording fees, and is based on a total of 150 hours for the easement acquisition assistance; and

WHEREAS, the City Council now desires and finds it in the best interest of the City to approve the Professional Services Agreement with O.R. Colan Associates, LLC for the Willow Hill Stormwater Infrastructure Improvement Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute on behalf of the City the Professional Service Agreement between the City of Ladue and O.R. Colan Associates, LLC for the Willow Hill Stormwater Infrastructure Improvement Project in substantially the form of Exhibit A incorporated herein by reference (the "Agreement"),

Section 2. This Resolution shall take effect and be in force from and after its passage and approval by the Mayor.

Adopted by the City Council and approved by the Mayor on this 16th day of December 2019.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

Exhibit A
The Agreement

City of Ladue, Missouri
PROFESSIONAL SERVICES CONTRACT

DEPARTMENT: PUBLIC WORKS

DATE: DECEMBER 16, 2019

THIS AGREEMENT, ("Contract" or "Agreement") effective as of the date of signature by both parties, is by and between the **City of Ladue**, a Missouri municipal corporation, hereinafter referred to as City, and O.R. Colan Associates LLC, with address at 3050 West Clay Street, Suite 200, St. Charles, MO 63301-2549, hereinafter referred to as "CONSULTANT."

WITNESSETH: That the parties hereto, for the considerations hereinafter set forth, agree as follows:

I. SCOPE OF SERVICES

Consultant services are necessary for the following Project: City of Ladue, Willow Hill Stormwater Infrastructure Project: Easement Acquisition Assistance

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as follows (and as more specifically set forth in the attached **Exhibit A** incorporated herein):

- Easement Acquisition assistance for the Willow Hill Stormwater Infrastructure Project which could include answering property owner questions, facilitation of signing of easement documents, preparing Payment Estimates for use by property owners, and meeting with individual property owners

The above services (hereinafter referred to as the Work) shall be provided by the Consultant in accordance with all the provisions of the Contract and attached **City of Ladue General Conditions** for the project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment. The specific scope of work for individual projects will be determined on a project by project basis.

II. COMPENSATION

A. Basic Compensation. The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

☒ a sum not to exceed \$19,300, excluding easement recording fees.

or (if above box is not checked):

☐ such amount as is set forth on an attached Exhibit A which such amount is incorporated herein and subject to any such limits as established therein and in approving authorization.

☐ Scope of Work performed on an Hourly Rate Basis, as set forth on an Hourly Rate Schedule on attached Exhibit A, of which the specific Scope of Work for each individual project is to be determined on a project by project basis.

B. Additional Compensation. Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Consultant shall be paid as follows:

Only as agreed to in writing and in compliance with City Codes.

III. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in duplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance of the Work for the fees, prices, rates or schedule of values set forth above.

IV. CONTRACT SCHEDULE

The Work to be performed under the Contract is estimated to be completed within six months of execution of this agreement and shall be performed so as not to delay or hinder City's schedule for the project.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

CONSULTANT

CITY OF LADUE, MISSOURI

By: _____

By: _____
Mayor Nancy Spewak

Title: _____

DATED: _____

DATED: _____

ATTEST:

**CITY OF LADUE
PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS**

Independent Consultant. The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant, if any, shall be employees of said Consultant and not employees of the City in any respect.

Compliance with Laws. The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, applicable taxes, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. If applicable, the provisions and requirements of section 290.250 RSMo. shall apply and are incorporated herein. If applicable, Consultant and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. such employees must hold documentation of prior completion of the program and shall be subject to such penalties as provided in § 292.675.4 RSMo. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the Consultant shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Consultant in an effort to resolve any such conflict. Unless expressly provided, Consultant shall be responsible for all costs, taxes, fees, charges, expenses, or other costs attributable to the performance of the Work.

Subcontracts. Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant without the prior written consent of the City.

Indemnification. To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Contract or out of services and operations negligently performed hereunder by the Consultant, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Consultant under the terms of this agreement. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

Nondisclosure. The Consultant agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the City.

Changes. No change in this Contract shall be made except in writing executed by all parties prior to the change in work or terms being performed. The Consultant shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Work. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

Termination. The City shall have the right to terminate the Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

Other Consultants. The City reserves the right to employ other consultants in connection with the Work.

Request for Proposals. If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant/Services Contract or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Contract shall control and supersede unless a change thereto is specifically stated in this Contract.

Project Records and Work Product. The Consultant shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. Upon full payment of all amounts due under this agreement, the City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant created in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Work.

Personnel. The Work shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work, if any. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in Exhibit B. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States (attached as provided for in Exhibit B).

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any Contract awarded to the Consultant.

Representations. Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

Governing/Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Exhibit A
PROPOSAL



December 2, 2019

Anne Lamitola
Director of Public Works
City of Ladue
9345 Clayton Road
Ladue, MO 63124

RE: Willow Hill Pipe Project
Easement Acquisitions

Dear Ms. Lamitola;

Per your request, following is a proposal from O. R. Colan Associates (ORC) to assist the city in acquiring easements on up to 29 parcels for the Willow Hill Pipe Project.

It is our understanding that all the property owners have agreed to donate the needed property rights and all the paperwork has been prepared. ORC's role would be to answer property owner questions, facilitate their signing of the documents and, as requested, prepare Payment Estimates for use by the property owners in preparing their taxes. It is estimated that these services would take about 150 hours.

Based upon the above, the ORC cost proposal for the work is as follows:

Time

Agent (Leslie Metts & Quality Review) 150 hours @ \$121/hour = \$18,150

Expenses

Mileage 1500 miles @ \$.585 per mile = \$877.50

Postage = \$100

Misc. = \$172.50

TOTAL COST PROPOSAL: \$19,300

There may also be fees to record some of the documents. The recording fees are separate from the above and will be charged to the city as a pass-through expense at actual cost.

Thank you for the opportunity and please let us know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daryl Knobbe".

Daryl Knobbe
Vice-President

**AFFIDAVIT OF PARTICIPATION IN
FEDERAL WORK AUTHORIZATION PROGRAM
(CONTRACTS OVER \$5,000)**

(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)

[6]